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No. ___

IN THE

Supreme Court of the United States

HOWARD MCDOUGALL, Estate of ROBERT J. BAKER, ARTHUR H. BUNTE, JR., R.V. PULLIAM, SR., JOE ORRIE, JERRY YOUNGER, GEORGE J. WESTLEY, RAY CASH AND RONALD J. KUBALANZA,

Petitioners,

v.

C.C. MID WEST, INC.

Respondent.

On Petition for a Writ of Certiorari to the Michigan Supreme Court

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Section 514(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1144(a), preempts a third-party's state law causes of action against fiduciaries of an employee benefits plan, where the basis of the claim arises from communications made by the fiduciaries to plan participants concerning the participants' rights under the terms of the employee benefit plan, even if a third-party contends that the fiduciaries acted with an improper motivation or made an erroneous decision for an improper purpose?

2. Whether a state court may nullify the effect of ERISA preemption by conducting a "threshold" preemption inquiry concerning whether ERISA plan participants were eligible for certain plan benefits, whether plan fiduciaries had a duty to communicate with participants concerning plan benefits, and other matters of plan administration and interpretation that are subject to exclusive federal regulation under ERISA?

PARTIES TO THE PROCEEDINGS

Petitioners

Petitioners Howard McDougall, Arthur H. Bunte, Jr., R.V. Pulliam, Sr., Joe Orrie, Jerry Younger, George J. Westley, and Ray Cash are individuals who were Trustees and fiduciaries of the Central States, Southeast and Southwest Areas Pension Fund. The Estate of Robert J. Baker is the estate of the late Robert J. Baker, who was a Trustee and fiduciary of the Central States, Southeast and Southwest Areas Pension Fund. Ronald J. Kubalanza is an individual who was the Executive Director and a fiduciary of the Central States, Southeast and Southwest Areas Pension Fund.

Respondent

C.C. Mid West, Inc., is a Michigan corporation.

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OPINIONS BELOW

The November 22, 2004 Order denying reconsideration entered by the Michigan Supreme Court is unreported as is set forth in Appendix A hereto (App. A at 1a).

The June 17, 2004 Order entered by the Michigan Supreme Court is unreported and is set forth in Appendix B hereto (App. B at 3a).

The January 17, 2003 Opinion entered by the Michigan Court of Appeals is unreported and is set forth in Appendix C hereto (App. C at 5a).

The July 22, 2002 Order entered by the Michigan Supreme Court is unreported and is set forth in Appendix D hereto (App. D at 15a).

The June 22, 2001 Opinion entered by the Michigan Court of Appeals is unreported and is set forth in Appendix E hereto (App. E at 17a).

The May 8, 1998 Opinion entered by the Oakland County, Michigan Circuit Court is unreported and is set forth in Appendix F hereto (App. F at 26a).

The January 14, 1998 Opinion and Order of the United States District Court for the Eastern District of Michigan is reported at 990 F. Supp. 914 (E.D. Mich. 1998), and is set forth in Appendix G hereto (App. G at 47a).

BASIS FOR JURISDICTION

On June 17, 2004, the Michigan Supreme Court entered the order for which Petitioners seek review. On November 22, 2004, the Michigan Supreme Court denied reconsideration of the June 17, 2004 order with one Justice dissenting. This petition for writ of certiorari is filed within 90 days from the date of the entry of the November 22, 2004 order denying reconsideration. 28 U.S.C. § 2101(c).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 514(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1144(a), provides:

> **(a) Supersedure; Effective Date.**–Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee

benefit plan described in §4(a) and not exempt under §4(b). This section shall take effect on January 1, 1975.

Section 514(c)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1144(c)(1), provides:

(c) Definitions.–For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

STATEMENT OF THE CASE

The Central States, Southeast and Southwest Areas Pension Fund ("Central States") is a not-for-profit "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1002(3). Central States was established in accordance with Section 302 of the Labor-Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 186, and Sections 402 and 403 of ERISA, 29 U.S.C. §§ 1102 and 1103. Petitioners Howard McDougall, Arthur H. Bunte, Jr., R.V. Pulliam, Sr., Joe Orrie, Jerry Younger, George J. Westley, and Ray Cash were trustees and fiduciaries of Central States during the time period in question. Petitioner Estate of Robert J. Baker was substituted for the late Robert J. Baker, who was a trustee and fiduciary of Central States during the time period in question. Petitioner Ronald J. Kubalanza was the Executive Director and a fiduciary of Central States during the time period in question. During the period in question, Central States was governed by a board of eight trustees, four appointed by employers and four appointed by unions representing employees of participating employers, as expressly authorized by Section 302(c)(5) of the LMRA, 29 U.S.C. § 186(c)(5).

The Complaint filed by Respondent C.C. Mid West, Inc ("C.C. Mid West") alleges the following facts: C.C. Mid West is a trucking operation and a wholly-owned subsidiary of CenTra, Inc. ("CenTra"). (Complaint, ¶ 8.) CenTra formerly owned Central Transport, Inc. ("Central Transport")—a company which participated in Central States until its shutdown in March 1997, and which was at least at one time (like C.C. Midwest) a subsidiary of CenTra. (Complaint, ¶ 8-9.) Approximately 235 former employees of Central Transport are participants in Central States. (Complaint, ¶ 10.) After Central Transport terminated the employment of these participants, Central States permitted the former employees to make self-contributions to Central States for a period of up to five years. (Complaint, ¶ 16.) After Central Transport ceased operations, C.C. Mid West contacted some of Central Transport's former employees and "offered to negotiate and ultimately enter into independent contractor agreements" with them. (Complaint, ¶ 19.) C.C. Mid West actually entered into employment agreements with 59 former Central Transport employees. (Complaint, ¶ 20.)

In April 1997, representatives of Central States met with the former Central Transport employees in Fort Wayne, Indiana to describe how employment by C.C. Mid West would affect their rights under Central States' plan. (Complaint, ¶ 24.) On May 7, 1997, Central States wrote the participants, who were former Central Transport employees, to advise them about certain determinations which Central States had taken with respect to their benefits and to encourage them to speak to a Central States representative to "determine how this will affect your benefit status. . . .") (Complaint, ¶ 25.) The May 7, 1997 letter also stated:

> The Trustees also agreed to permit those participants who are on lay-off status as a result of Central Transport, Inc.'s shut-down to continue to make pension self-payments for a period of up to five (5) years provided that self-contributions will not be accepted for any

> period during which a participant is performing work for any company affiliated with either U.S. Truck Company, Inc. or CenTra, Inc.

(Complaint, Ex. A.)

Based upon these allegations, C.C. Mid West (which is alleged to be an affiliate of CenTra) challenged the fiduciaries' "refusal to accept self-contributions from owner-operators." (Complaint, ¶ 30.) C.C. Mid West goes on to allege that "Defendants' wrongful conduct has no lawful connection with the purpose of the Pension Fund." (Complaint, ¶ 39.) The Complaint contains three counts. Count I alleges that the trustees' communications constitute "tortious interference with contractual relations." Count II alleges that the trustees' communications constitute "tortious interference with business expectancies." Count III seeks exemplary damages.

The thrust of these allegations is that the Defendant plan fiduciaries tortiously interfered with C.C. Midwest's interest in hiring the employees layed off by Central Transport when the fiduciaries communicated their benefit determination that the layed off employees/plan participants would not be eligible under the plan to make pension self-contributions if they returned to active employment with another affiliate of CenTra (*e.g.*, C.C. Midwest).

After the Complaint was filed, Defendants sought to remove the case from the Oakland County Circuit Court to the United States District Court for the Eastern District of Michigan arguing that the state law claims were completely preempted by ERISA. The district court ordered the case remanded to state court because the "complaint asserts solely state law claims, and Plaintiff would be unable to bring a civil enforcement action under § 1132(a) because Plaintiff is not a party authorized to do so under that section." *C.C. Mid West, Inc. v. McDougall*, 990 F. Supp. 914, 924 (E.D. Mich. 1998) (App. G at 68a.).

After the case was remanded to state court, the circuit court granted the Defendants' motion for summary disposition holding that ERISA preempted C.C. Mid West's state law claims. (App. F at 45a.) On appeal, the Michigan Court of Appeals affirmed the circuit court. Relying on the allegations in the Complaint, including the ERISA fiduciaries' May 7, 1997, letter which was attached to the Complaint, the court of appeals held that C.C. Midwest failed to state a claim for tortious interference because Defendants were motivated, at least in part, by legitimate business reasons. (App. E at 23a-25a.) Further, the court of appeals recognized that Defendants were acting under legally mandated obligations to inform their participants of their rights under the ERISA plan, but did not explicitly hold that C.C. Midwest's claims were preempted. (App. E at 23a-25a.) On July 22, 2002, the Michigan Supreme Court vacated the decision, and remanded the case so that the court of appeals could decide the preemption issue. (App. D at 15a-16a.)

On remand, the court of appeals held that C.C. Mid West's claims were preempted by ERISA and again affirmed the circuit court's dismissal of C.C. Mid West's claim. (App. C at 11a-14a.) The court of appeals explained the basis for its conclusion:

> defendants, as fiduciaries of the Pension Fund had a statutory obligation under ERISA to inform plan participants of matters that could affect their interest under the Plan.
>
> . . .
>
> As we did in our first opinion, we again conclude that defendants' actions were undertaken as fiduciaries of the Pension Fund. By law, defendants had a duty to inform the plan participants of their rights under the plan and how those rights may be affected by certain employment contracts. The meeting held with and the letter sent to the plan participants by defendants informed the plan

> participants to contact the Pension Fund's toll free number in order to find out how their decisions may impact benefits. The trial court did not err by concluding that even if the administration of the fund was malicious as alleged by plaintiff, the manner in which the Pension Fund was administered is a critical factor in plaintiff's claims and thus plaintiff's claims are subject to preemption.

(App. C at 11a-12a (citations omitted).)

The case returned yet again to the Michigan Supreme Court which yet again vacated and remanded the decision of the court of appeals. Although the court disclaimed an intention to be "endorsing a particular definition of 'relate[s] to' for the purpose of preemption under [ERISA]," the court explained that a remand for further factual development was necessary because:

> it is not apparent from the pleadings, depositions, admissions, and documentary evidence whether the plan administrators had any duty to communicate information to the former employees because it is impossible to determine from the available information whether the former employees remained eligible to self-contribute at the time the challenged communications were made.

(App. B at 3a-4a.) After this Court issued its decision in *Aetna Health, Inc. v. Davila*, __ U.S. __, 124 S. Ct. 2488 (2004), Defendants moved for reconsideration before the Michigan Supreme Court. Over one dissent, the Michigan Supreme Court denied reconsideration. (App. A at 1a.)

REASONS FOR GRANTING THE WRIT

This case presents a frontal attack on ERISA preemption by requiring ERISA fiduciaries to justify, in state court, that they acted for a proper ERISA purpose when they made benefit determinations and communicated those benefit determinations to ERISA plan participants. As such, the decision

of the Michigan Supreme Court necessarily subjects the ERISA fiduciaries to state law determinations in direct contradiction to Congress' intention when it passed ERISA.

As this Court has repeatedly held, Congress intended that plans and fiduciaries be governed by a uniform federal administrative scheme to avoid the risk that state law might impose new and different standards on ERISA plans and fiduciaries. *Aetna Health, Inc. v. Davila*, __ U.S. __, 124 S. Ct. 2488, 2495 (2004); *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 10-11(1987) (unpredictable litigation burdens may well cause "employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them"). In this case, the Michigan Supreme Court has held that the determination of whether a claim is preempted may turn on "whether the former employees remained eligible to self-contribute at the time the challenged communications were made." (App. B at 4a.) In other words, according to the Michigan Supreme Court, a claim may not be preempted because the communication (and implicitly the underlying benefit determination) was incorrect under the terms of the plan. However, the very nature of the inquiry demonstrates that the resolution of the claim is dependent upon both the interpretation of the terms of the plan and the administration of the plan. No matter how the Michigan Supreme Court might attempt to recast the inquiry, the Michigan Supreme Court was forcing ERISA fiduciaries to defend themselves and their fiduciary determinations in a state court under state law.

The issue of "eligibility" for benefits which the Michigan Supreme Court identified as a threshold question in the preemption analysis in itself requires an interpretation of the plan, and improperly embroils state law in core matters of ERISA plan administration. (App. B at 4a.) Similarly, under the guise of preliminary "factual development," the Michigan Supreme Court has directed the state courts to determine the

extent to which the Defendant plan fiduciaries "had a duty to communicate" with the plan participants concerning the pension benefit determination that is at the heart of this case. (App. B at 4a.) Clearly, a determination concerning the scope of a fiduciary's duty to communicate with plan participants concerning benefits can only be made under ERISA, and cannot be resolved under state law. While the Michigan Supreme Court claimed that it was not resolving the ultimate issue preemption issue—whether C.C. Mid West's claim "relates to" an ERISA plan (App. B at 4a)—in fact the preemption analysis which the Michigan Court articulated invites state law resolution of key issues of plan interpretation and administration.

The Michigan Supreme Court's ruling also improperly imposes the burden of "factual development" in a state court proceeding upon ERISA plans. The Michigan Supreme Court's ruling will subject ERISA plans to discovery and other procedural hurdles in state courts even in cases—like this one—in which the pleadings themselves make clear that the basis of the claim is a benefit plan interpretation by plan fiduciaries and the communication of that interpretation to plan participants. This is a burden imposed upon ERISA plans under state law that runs clearly contrary to the intent of the ERISA preemption provision.

As discussed in detail below, this decision conflicts with this Court's decisions, in particular its decision in *Aetna Health*. Further, the decision conflicts with decisions of various courts of appeals, including the Fifth Circuit in *Mayeaux v. Louisiana Health Serv. & Indemnity Co.*, 376 F.3d 420 (5th Cir. 2004), and the Eleventh Circuit in *Garren v. John Hancock Mut. Life Ins. Co.*, 114 F.3d 186 (11th Cir. 1997) (per curiam), which both held that state law claims such as the claims raised by C.C. Mid West in this case are

preempted by ERISA precisely *because* they require an inquiry into benefit decisions and communications made by plan administrators.

This case warrants the Court's review because the Michigan Supreme Court's decision will subject employee benefit plans and their fiduciaries to varying standards depending upon the vagaries of state law, subject them to liability and damages not authorized by ERISA based upon a showing that a benefit determination or communication was erroneous, and, at a minimum, expose them to increased litigation burdens due to having to defend such claims.

1. A State Law Cause of Action Is Preempted by ERISA Where the Cause of Action "Relates To" an ERISA Plan by Requiring an Examination of the Terms of the Plan.

A state law may "relate to" an employee benefit plan and thereby be preempted, even if the law is not specifically designed to affect such plans, and even if the effect is indirect. *District of Columbia v. Greater Wash. Bd. of Trade*, 506 U.S. 125, 129-30 (1992). A state-law cause of action relating directly to the operation of an ERISA employee benefit plan is preempted even if it arises under a law of general application that has no connection to employee benefit plans. *Christopher v. Mobil Oil Corp.*, 950 F.2d 1209, 1218-19 (5th Cir. 1992). To determine whether there is preemption, a court must consider whether "the underlying conduct" that forms the basis of the claim could "be divorced from its connection to the employee benefit plan." *Id.* at 1220. A claim that has such a connection to an employee benefit plan is preempted even if ERISA does not provide a remedy. *E.g. Cannon v. Group Health Serv. of Okla., Inc.*, 77 F.3d 1270, 1274-75 (10th Cir. 1996).

This Court's decision in *Aetna Health* is instructive because it reversed a court of appeals decision which, like the

decision of the Michigan Supreme Court, concluded that issues about fiduciary responsibility could be determined *as a matter of fact*. The court of appeals in *Aetna Health* concluded that the decisions for which the petitioners in that case were being sued were "mixed eligibility and treatment decisions" and hence were not fiduciary in nature. *Aetna Health*, 124 S. Ct. at 2494. The court of appeals next determined that respondents' claims did not fall within ERISA because the plaintiffs "assert tort claims," while Section 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B), "creates a cause of action for breach of contract," and also the *Aetna Health* plaintiffs "are not seeking reimbursement for benefits denied them," but rather request "tort damages" arising from "an external, statutorily imposed duty of 'ordinary care.'" *Id.* The court of appeals also concluded that ERISA preemption is limited to situations in which "State . . . duplicate the causes of action listed in ERISA § 502(a) [29 U.S.C. § 1132(a)] . . . ." *Id.*

This Court rejected that reasoning. In doing so, the Court observed that an essential part of the *Aetna Health* plaintiffs' claims, like C.C. Mid West's claims in this case, required interpretation of the terms of an ERISA benefit plan, and, therefore, the state law liability would exist only because of the *Aetna Health* defendants' administration of ERISA-regulated benefit plans. As stated by the Court: "Petitioners' potential liability under the THCLA in these cases, then, derives entirely from the particular rights and obligations established by the benefit plans." *Id.* at 2498.

In this case, it is impossible to divorce C.C. Mid West's claim from its connection with Central States' plan. The core allegations of the Complaint, as evidenced by the May 7, 1997 letter which C.C. Mid West attached to the Complaint, revolve around the Trustees' alleged abuse of their fiduciary positions in order to penalize C.C. Mid West. And, as the Michigan Supreme Court's order makes clear, determining

the merits of C.C. Mid West's Complaint necessarily requires an examination of the ERISA plan provisions in order to determine whether the Trustees complied with those provisions when they communicated with plan participants about the right to make self-contributions to Central States if they went to work for C.C. Mid West.

Because the Michigan Supreme Court's order requires an examination of Central States' plan to determine whether "the former employees remained eligible to self contribute at the time the challenged communications were made," the order mandates an inquiry which ERISA bars. If a state court must look to the plan to determine whether an action is permissible, then necessarily the state law claim "relates to" an ERISA plan and it is preempted because the ERISA plan is a "critical factor" in determining the existence of a state law remedy. *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 139-40 (1990). C.C. Mid West cannot avoid this necessary conclusion by stating that it is not seeking benefits or invoking ERISA rights. C.C. Mid West's fundamental claim challenges a benefit determination made by the Trustees, namely the decision communicated in the May 7, 1997 letter that participants would not be allowed to make "pension self-payments" if they worked for C.C. Mid West or other companies affiliated with CenTra.

2. A State Law Cause of Action That Requires an Examination of the Correctness of a Determination or Communication Made by the Plan Is Preempted by ERISA because the Correctness of the Determination or Communication Does Not Change the Fact that the Determination or Communication "Relates To" the Plan.

The Michigan Supreme Court's order erroneously ties the question of the "duty to communicate information" to a determination whether "the former employees remained elig-

ible to self-contribute at the time the challenged communications were made." (App. B at 4a.) Said another way, the order necessarily means that ERISA preemption applies only when the fiduciaries make correct determinations, but does not apply when the fiduciaries make incorrect determinations. However, this Court's precedents establish that the correctness of the determination does not affect whether it is "related to" a plan.

Aetna Health reiterates that the fiduciary's duty to communicate with participants and to determine whether benefits are awarded arises under ERISA, not state law. ERISA itself defines what constitutes a "fiduciary" and, therefore, what constitutes a fiduciary duty:

> ERISA defines a fiduciary as any person "to the extent . . . he has any discretionary authority or discretionary responsibility in the administration of [an employee benefit] plan." § 3(21)(A)(iii), 29 U.S.C. § 1002(21)(A)(iii). When administering employee benefit plans, HMOs must make discretionary decisions regarding eligibility for plan benefits, and, in this regard, must be treated as plan fiduciaries.

124 S. Ct. at 2501-02. ERISA Section 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), expressly mandates that a plan fiduciary "shall discharge his duties with respect to a plan *solely in the interest of the participants and beneficiaries* and . . . for the *exclusive purpose of providing benefits to participants and their beneficiaries* . . ." (emphasis added). Although the statute articulates a number of fiduciary duties, it is not exhaustive. Rather, Congress relied upon the common law of trusts to "define the general scope of [fiduciary] authority and responsibility." *Central States, S.E. & S.W. Areas Pension Fund v. Central Transport, Inc.*, 472 U.S. 559, 570 (1985). Fiduciary duty includes the common law duty of loyalty, which requires fiduciaries to deal fairly and honestly with beneficiaries. *Varity Corp. v. Howe*, 516 U.S. 489, 508

(1996). Thus, the Court had no trouble concluding in *Aetna Health* that "a benefit determination is part and parcel of the ordinary fiduciary responsibilities connected to the administration of the plan." 124 S. Ct. at 2501. Therefore, if, as C.C. Mid West alleges, the Trustees acted selfishly with the intention of harming C.C. Mid West (rather than in the interests of the plan participants), then the Trustees violated their duties under ERISA. This is true regardless of whether the Trustees wrongfully denied benefits or fraudulently communicated about the availability of benefits.

In *Varity*, an employer distributed materials and held a meeting in which it convinced some 1,500 employees to voluntarily transfer to a new subsidiary by intentionally misrepresenting the subsidiary's financial viability and the future security of the participants' benefits, should they accept the transfer. *Id.* at 492-94. In reviewing this claim, this Court stated that "[c]onveying information about the likely future of plan benefits, thereby permitting beneficiaries to make an informed choice about continued participation, would seem to be an exercise of a power 'appropriate' to carrying out an important plan purpose." *Id.* at 502. Thus, the Court concluded:

> To participate knowingly and significantly in deceiving a plan's beneficiaries in order to save the employer money at the beneficiaries' expense is not to act "solely in the interest of the participants and beneficiaries." As other courts have held, "[l]ying is inconsistent with the duty of loyalty owed by all fiduciaries and codified in section 404(a)(1) of ERISA [29 U.S.C. § 1104(a)(1)]."

Id. at 506 (citations omitted).

In this case, there is no dispute that the Trustees had authority to communicate as fiduciaries with plan beneficiaries. Also, there is no dispute that the Trustees did communicate about benefits—whether truthfully or falsely.

Thus, in order to resolve the allegations in the Complaint, the Trustees' actions must be analyzed to determine whether they conform to the standards imposed by ERISA. However, since such an inquiry "relates to" the plan, the state law cause of action is preempted by ERISA. To hold otherwise would allow a state law remedy that would conflict and/or supplement the causes of action provided by ERISA, the precise result that ERISA preemption is designed to avoid. *See Aetna Health*, 124 S. Ct. at 1295 ("any state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted").

3. A State Law Claim Based Upon a Determination or Communication Regarding Benefits Under the Terms of an ERISA Plan Is Preempted Even if the Claim Is Not Made by a Participant or Beneficiary.

This Court has held that state law claims based upon the improper processing of benefits, such as for tortious breach of contract, "undoubtedly meet the criteria for pre-emption under § 514(a) [29 U.S.C. § 1144(a)]." *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 47-48 (1987). Based upon *Pilot Life*, numerous courts of appeals have concluded that state law claims for tortious inference with contract are preempted when the claim involves the proper administration of the plan. *E.g., Garren v. John Hancock Mut. Life Ins. Co.*, 114 F.3d 186, 187-88 (11th Cir. 1997) (per curiam); *Kuhl v. Lincoln Nat'l Health Plan*, 999 F.2d 298, 302 (8th Cir. 1993); *Greany v. Western Farm Bureau Life Ins. Co.*, 973 F.2d 812, 819 (9th Cir. 1992); *Tomczyk v. Blue Cross & Blue Shield United*, 951 F.2d 771, 776-77 (7th Cir. 1991).

This result does not change even if the party asserting the claim is neither a participant nor a beneficiary. For example, in *Garren*, the plaintiff argued that his claim for tortious

interference with contract was not preempted by ERISA because the defendant insurance company was not the plan administrator. 114 F.3d at 188. In rejecting this argument, the Eleventh Circuit held that "[t]he proper focus is not on the relationship between the parties but on the relationship between the alleged conduct and the refusal to pay benefits." *Id.* As in *Garren*, the claims made by C.C. Mid West relate to the administration of the plan and are thus preempted regardless of whether C.C. Mid West has any remedy under ERISA.

The Fifth Circuit's decision in *Mayeaux v. Louisiana Health Serv. & Indemnity Co.*, 376 F.3d 420 (5th Cir. 2004), demonstrates that it is the relationship between the claim and the administration of the plan, not the identity of the plaintiff, that controls. In *Mayeaux*, one of the plaintiffs was the participant's doctor. He asserted various state law claims including intentional interference with contracts, arising from the denial of the participant's benefit claim. In affirming the district court's judgment in favor of the plan on preemption grounds, the court held:

> Dr. Hyman's state law claims for interference with contract and defamation also fail the conflict preemption test. To allow a medical practitioner to sue for defamation and intentional interference when an ERISA plan administrator decides that the plan does not cover a particular medical treatment for a particular participant or beneficiary would undoubtedly jeopardize the relationships among the traditional ERISA entities of which the treating physician is not one. These are the sort of claims that go to the very heart of the ERISA administration process. We further agree with the district court that "[e]ven though these claims are labeled by Plaintiffs as state law, the claims arose from the manner in which [BCBS] determined not to cover Hyman's high dosage antibiotic treatments and the subsequent notification to patients that HDAT would not be covered under the Adler Plan." Thus, we have no difficulty

> holding that "the existence of an [ERISA] plan is a critical factor is establishing liability" for the state law causes of action asserted by Dr. Hyman. We conclude that, as such, they are conflict preempted.

Id. at 433 (footnotes omitted).

Here, the relationship between Central States and its participants, and the ability of the trustees to administer the plan, would be adversely affected if "tortious interference" state law claims such as those asserted by C.C. Mid West are allowed to proceed. C.C. Mid West's claims would necessarily require an examination of the way in which the Plan was administered and thus thwarted the fundamental policies embodied in ERISA's preemption provision. Taken to the logical conclusion, if C.C. Mid West were allowed to bring its state law claims and prevail, the Plan would be required to either change its benefit determinations or be penalized for not changing them. Nothing could relate more to or be connected with an ERISA plan as basic benefit determinations. In essence, C.C. Mid West is attempting to mandate benefits, in the form of allowing them to self-contribute, for those Plan participants C.C. Mid West hired or intends to hire.

The Michigan Supreme Court's Order in this case purported to take no position concerning whether C.C. Mid West's claims "relate to" an ERISA plan, but the "factual development" which it mandated on remand of this case necessarily entails state law scrutiny concerning core matters of ERISA plan administration. (App. B at 4a.) That is, the Michigan Supreme Court has instructed the state courts to *interpret* the ERISA plan at issue in this case in order to determine whether the plan participants were "eligible" for the pension benefits in question, and to determine whether the fiduciaries had a "duty to communicate" to the participants concerning these benefits. (App. B at 4a.) Although the Michigan Supreme Court has attempted to cast these issues as "threshold" matters in the preemption analysis (App. B at 4a), in

fact the inquiry directed by the Michigan Supreme Court necessarily will draw state law into issues of benefit plan administration that are the exclusive province of federal law.

Moreover, the Michigan Supreme Court's ruling in this case threatens to needlessly burden ERISA plans and plan fiduciaries with discovery and "factual development" concerning matters of plan administration under the guise that such inquiries are necessary as a part of the preemption analysis. (App. B at 4a.) In this case, C.C. Mid West's pleadings leave no doubt that its claim is based upon a benefit determination made by plan fiduciaries and communicated to plan participants. Given the allegations of the Complaint, it is impossible to state or imagine any "factual development" which could possibly demonstrate that this case is anything other than a direct challenge under state law to a benefit determination made by ERISA plan fiduciaries.

Under these circumstances, to subject plan fiduciaries to the burden of discovery and further "factual development" in a state law proceeding would run counter to the fundamental ERISA preemption principle that matters of plan administration cannot be regulated under state law.

In sum, the decision of the Michigan Supreme Court conflicts with both this Court's decisions, most notably the *Aetna Health* decision, and with the decisions of numerous courts of appeals including the Fifth Circuit in *Mayeaux* and the Eleventh Circuit in *Garren*. Since the claims made by C.C. Mid West require inquiry into whether the determinations and communications made by the Trustees in administering the plan were correct, these claims are preempted by ERISA. To hold otherwise will expose employee benefit plans and their fiduciaries to liability under conflicting state law standards and will subject them to costly and burdensome litigation, precisely the result that ERISA § 514(a) was enacted to prevent.

CONCLUSION

For the reasons stated, this Court should grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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